

**AGREEMENT BETWEEN**  
**EAST TENNESSEE STATE UNIVERSITY**  
**AND**  
**EAST TENNESSEE STATE UNIVERSITY FOUNDATION, INC.**

THIS AGREEMENT, made the 24<sup>th</sup> day of June, 2020, by and between East Tennessee State University (hereinafter referred to as the “Institution”) and East Tennessee State University Foundation, Inc. (hereinafter referred to as the “Foundation”).

The Foundation is a private non-profit public benefit corporation existing by virtue of Tenn. Code Ann. 49-7-107 and Tenn. Code Ann. 48-51-101 et.seq. (Tennessee Nonprofit Corporation Act), is tax-exempt under Section 501(c)(3) of the Internal Revenue Code, and is organized to work in concert with the Institution. The Foundation is established by Charter and Bylaws dated November 4, 1970 and its purpose as stated therein. As set forth by its charter, the Foundation’s objectives are (1) to promote the cause of higher education and particularly the mission of the Institution; (2) to expand educational opportunities; and (3) to acquire, manage and administer Foundation funds to achieve those objectives. The Foundation is organized exclusively for charitable, educational purposes and is empowered to encourage, solicit, receive, manage, administer, control, invest, and disburse contributions, gifts, grants, bequests, and transfers of funds or property of any nature, and carry out the wishes of donors and see that property so received is applied to the uses specified by the donors.

The Institution is a public institution of higher education created by Tenn. Code Ann. 49-8-101 and governed by the ETSU Board of Trustees. The Institution is authorized to do all things it deems to be in the best interest of the Institution within the parameters of guidelines and policies established by the Board of Trustees and state and federal law and in accordance with its agreement with the Foundation.

**The parties hereby agree as follows:**

**I. Foundation Powers, Duties, and Responsibilities**

1. The Foundation is run by an independent Board of Directors and is independent of the institution and the state. The board consists of not less than 15 and no more than 21 elected by the Board of Directors.
2. In addition to the Board of Directors, an Executive Committee has been established to make interim decisions on behalf of the Board regarding daily operations. The Executive Committee of the Board of Directors shall consist of not less than seven members and be composed of the officers of the Foundation.

**The Executive Committee** of the Board of Directors consists of:

- a. Chairman of the Board of Directors – Board Member

- b. Vice Chairman (Chairman-elect) – Board Member
  - c. Immediate Past Chairman – Board Member
  - d. Secretary – Board Member
  - e. Treasurer – Board Member
  - f. President/CEO of the Foundation – Board Member
  - g. Chairman of the Investment Committee – Board Member
  - h. Chief Financial Officer (non-voting)
  - i. President of the University (non-voting)
3. The Foundation’s responsibilities shall include raising funds for the Institution. The Institution and the Foundation may share employees and services, including a database of information on donors. As used herein, the Foundation’s “database of information” includes but is not limited to a compilation of contributors, prospects, alumni, friends, and supporters of the institution. These records, as well as all other data, materials, and information of the Foundation pertaining to past, current, and prospective donors is proprietary to the Foundation and constitutes its confidential information and trade secrets.
  4. The Foundation may disclose confidential information from time to time to authorized institution personnel for purposes of cooperative planning and implementation as authorized by the Foundation.
  5. The Foundation’s responsibilities shall also include administration and management of the following:
    - a. **Trusts.** Legal devices used to set aside money or property belonging to one person or entity for the benefit of one or more persons or parties. Trust agreements transfer legal title but not ownership of the corpus to the trustees.
    - b. **Unrestricted gifts.** Assets or income unrestricted in terms of use, eligible recipients, or distribution procedures. A grant of unrestricted funds does not specifically stipulate how the money is to be spent by the grantee.
    - c. **Restricted gifts.** Assets or income restricted in terms of use, eligible recipients, or distribution procedures.
    - d. **Endowments.** Bequests or gifts intended to be kept permanently and invested to create income. All endowments shall be established with each donor by a Memorandum of Understanding or trust agreement. This ensures that the donor’s intent is fully understood by the Foundation and the Institution.
    - e. **In-Kind contributions.** Donations of goods or services rather than cash.
    - f. **Foundation accounts.** Accounts containing Foundation funds, including scholarship accounts, endowments, investment accounts, and operating fund accounts.

6. The Foundation board shall be designated as the entity responsible for promoting and generating private sector support for the institution.
7. The Foundation shall assist the institution and its colleges and departments in their fund raising activities, capital campaigns, and development programs with individuals, corporations, foundations, and other organizations.
8. As mutually agreed by the parties, the Foundation will perform other acts as may be deemed appropriate, consistent with the Foundation's mission and resources.
9. **Income Tax Filing:** The Foundation shall be responsible to file an annual Form 990 listing organizational assets, receipts, expenditures, and compensation of officers. IRS Form 990 is the annual "Return of Organization Exempt from Income Tax."
10. **Employment Taxes:** The Foundation shall be responsible for the timely submission of Form 941, if required. The parties acknowledge that no employment tax filing is required for any quarter in which the Foundation has no payroll or no employees.
11. **Miscellaneous Awards and Fees:** The Foundation shall file form 1099-MISC reporting awards, fees, and similar payments that must be reported to the IRS by the Foundation. This must be sent to the award recipient no later than January 31, and to the IRS, with Form 1096 transmittal, no later than February 28 of each year.
12. **Investment and Management of Foundation Funds:** The Foundation Board is vested with sole authority to invest and/or manage the Foundation's funds, including but not limited to, cash, securities, and real estate taking the form of trusts, endowments, restricted gifts, unrestricted gifts, or otherwise.
13. **Collection of Donations:** The Foundation is responsible for the collection of donations for the Institution's charitable, scientific, and educational purposes.
14. **Additional Foundation Authority:** The parties agree that the Foundation Board is empowered to:
  - a. Solicit gifts or assist the Institution in soliciting gifts from third persons in the name of the Institution and for the benefit of the Institution or any of the Institution's programs;
  - b. Solicit grants and contracts or accept grants;
  - c. Enter into contracts for services to be performed using the Institution's facilities and Foundation account funds;
  - d. Enter into contracts for goods or supplies using Foundation account funds;
  - e. Authorize payment of bills or professional fees in the name of or on behalf of the Foundation.

15. No institution/state funds will be used by the Foundation for the Foundation's operation and no state funds will be transferred either directly or indirectly to the Foundation. This does not prohibit the Foundation from sharing employees, as stated in #3 on page 2.
16. The Foundation shall implement a written, mandatory, document retention and periodic document destruction policy that complies with *Sarbanes-Oxley* prohibiting document purging if an official investigation is underway or suspected. The policy shall include guidelines for handling electronic files, voicemail, and paper documents.
17. The Foundation shall adopt an ethics policy complying with P.L. 879-2853 (2004), Tenn. Code Ann. 49-7-107, *as amended*, requiring that state college and university foundations adopt a code of ethics.
18. **Use of Institution Name/Marks:** The Foundation may, in connection with its lawful business and activities, use the name of the Institution as well as the Institution's logo, seal, and other symbols and marks.
19. The Foundation shall not delegate the authority to use the Institution's name or marks without written approval of the Institution's president and shall not permit the Institution's name or marks to be used in connection with advertising of non-institution or non-foundation products or services unless such use is consistent with policies of the institution.
20. The Foundation agrees to cease using the Institution's name and marks in the event:
  - a. Foundation dissolves;
  - b. The Foundation ceases to be a non-profit corporation or ceases to be recognized by the IRS as described in Section 501(c)(3) of the Internal Revenue Code; or
  - c. The Foundation or the Institution terminates this agreement.
21. The Foundation will be responsible for its own legal counsel.
22. With the assistance of Institution's administrative personnel, the Foundation will create the Foundation's budget.
23. The Foundation agrees to comply with all executive orders, federal, state, and local rules, regulations, and laws applicable to similar non-profit corporations.

## **II. Institution Powers, Duties, and Responsibilities**

1. The Institution agrees to encourage and maintain the independence of the Foundation and, at the same time, foster the cooperative relationship between the Institution and the Foundation.
2. Institution employees may:

- a. Provide professional services within the scope of their employment with the Institution;
  - b. Serve as *ex officio* members of the Foundation's Board of Directors or other governing structure;
  - c. Review the financial records of the Foundation to determine that the Foundation is adequately capitalized for any activities undertaken in the name of, for the benefit of, or in conjunction with the Institution.
  - d. Request or require evidence satisfactory to the president or the president's designee of insurance or self-insurance adequate in form and amounts to cover foreseeable liability arising from activities undertaken in the name of, for the benefit of, or in conjunction with the Institution.
  - e. Request periodic review of any written general agreement or memorandum of understanding between the Institution and the Foundation to ensure that it describes each party's responsibilities in a manner that makes it clear to third parties dealing with the cooperative organization that the organization is acting as a legal entity separate from the Institution; and
  - f. Take any action necessary to ensure that actions of the Institution's officials, faculty, staff, or employees pursuant to the relationship are consistent with policies established by the Board of Trustees and the System institution regarding conflicts of interest, outside activities, and other matters.
3. In consideration of the services provided to the Institution by the Foundation and as set forth herein, the Institution shall assist the Foundation Board in the following:
- a. Provision of office space, telephones, computers, supplies, etc. These will be considered in-kind services from the Institution. These in-kind services from the Institution shall be appropriately recognized in the Foundation's audit.
  - b. Provision of clerical and administrative support services through the Institution's Advancement Office.
  - c. Provision of designated financial services including financial record keeping.

### **III. Mutual Acknowledgements and Obligations**

1. Foundation funds shall be utilized in a manner consistent with the wishes of donors and the objectives of the Foundation.
2. The parties agree that investment and maintenance of Foundation funds will occur in accordance with the following principles:
  - a. Unless otherwise specified by the donor, the endowment principal account will be managed in accordance with UPMIFA (Uniform Prudent Management of Institutional

Funds Act) as approved by the State of Tennessee in Tenn. Code Ann. 35-10-201 *et.seq.* Unexpended interest and/or investment income may be returned to the endowment to grow the corpus or allowed to accumulate for future distribution or expenditure consistent with the donor's intent.

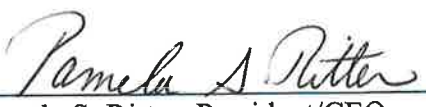
- b. Each endowment will be accompanied by a Memorandum of Understanding or other document setting forth the donor's wishes and intent with respect to the funds. This Memorandum of Understanding is the legally binding document used to ensure that the money is properly stewarded and that the donor's wishes are met in the distribution of funds. Each memorandum will be created by agreement of the donor and the Foundation. The Institution shall receive a copy of the memorandum. All criteria for the distribution of the endowment distributable earnings shall be delineated in the document and must reflect the donor's wishes.
  - c. Restricted funds, whether related to an endowment or not, will be spent only for the purpose intended by the donor both now and in the future.
3. **Termination.** Either party may terminate this agreement upon sixty days' notice. If terminated by either party, all funds, assets, data, and information in the possession of the Foundation will be promptly transferred to the Institution.
  4. **Effect of Agreement/Modification.** This agreement contains all the terms between the parties. It may be amended only in writing signed by legally authorized representatives of all parties.

**APPROVED:**

**East Tennessee State University Foundation, Inc.**

By:   
Lt. General (Ret.) Ronald V. Hite, Chairman

6/23/20  
Date

By:   
Pamela S. Ritter, President/CEO

6/24/20  
Date

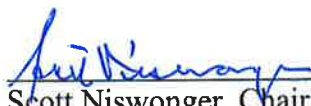
**East Tennessee State University**

By:   
Dr. Brian Noland, President

7-9-20  
Date

**ACKNOWLEDGED AND APPROVED:**

**ETSU Board of Trustees**

By:   
Scott Niswonger, Chairman

8-21-20  
Date